IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8474 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJNIKANT NARSINHDAS SHAH

Versus

INTERFAMA DISTRIBUTION

Appearance:

1. Special Civil Application No. 8474 of 1991

MR GA JOSHI for Petitioner.

MR BA Vaishnav for Mr. KV GADHIA for Respondent.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 06/02/2003

ORAL JUDGEMENT

The present petition is filed against the order passed by the Labour Court on 12.4.1989 in Recovery Application No. 4633 of 1986. The Labour Court has rejected the application on two counts, firstly, the applicant has not proved the claim by leading necessary evidence before the Court, and secondly the petitioner/original-applicant was not a workman as per

Section 2(s) of the Industrial Disputes Act, 1947 and that the provisions of Section 33C(2) are not applicable, as the said Section makes it clear that where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money, then only a Recovery Application can be filed before the Labour Court.

2. Being aggrieved by the said order of the Labour Court, the petitioner has filed the present petition before this Court. It has been contended that the respondent has victimised the petitioner and passed the retrenchment order dated 31st January 1987 which was contrary to the provisions of Section 25F of the Industrial Disputes Act, 1947. It was further stated that the Labour Court has not applied its mind while dealing with the submissions made by the petitioner as well as the evidence led by the petitioner. This Court has admitted the petition on 27.11.1991 and upon the notice being served on the respondent appearance was filed and affidavit-in-reply was also filed by the respondent. It was contended in the affidavit-in-reply that the petitioner was appointed as a Medical Representative by the respondent-company by appointment order dated 22nd June 1981 and that in the Recovery Application No. 4633 of 1986 filed by the petitioner before the Labour Court, the respondent company had raised the issue regarding territorial jurisdiction of the Labour Court as well as the applicant not being a "workman" as defined within the meaning of Section 2(s) of the Industrial Disputes Act and hence the recovery application was not maintainable before the Labour Court. It was further stated that the petitioner was retrenched on 31.1.1987 and he has already received the legal dues from the respondent-company. It was further stated that Serum Institute of India (P) Ltd., has terminated the agency of the respondent-company and hence the company's activities were virtually closed and hence the petitioner being a surplus was retrenched. The respondent company has also denied the claim of the petitioner in the Recovery Application because no documents were produced by the petitioner along with the application. Since the petitioner has failed to produce the same before the Labour Court, the main application was also rejected by the Labour Court.

3. Mr. GA Doshi, ld. advocate appearing for the petitioner is not present at the time when the petition was called out once in the 1st session and thereafter in the second session. Mr. BA Vaishnav, ld. advocate appearing for Mr. KV Gadhia for the respondent submits

that the Labour Court has rejected the application after appreciation of evidence and therefore this Court while exercising writ jurisdiction under Art. 226/227 of the Constitution should not interfere or disturb the finding given by the Labour Court. He has further submitted that since the petitioner was not a workman within the definition of Section 2(s) of the Industrial Disputes Act, the Recovery Application filed by the petitioner before the Labour Court was not maintainable and hence the Labour Court has rightly rejected the recovery application filed by the petitioner. Mr. Vaishnav has placed reliance on the decision of the Hon'ble Supreme Court in the case of H.R. Adyanthaya etc.etc. vs. Sandoz (India) Ltd.etc.etc., - AIR 1994 SC 2608, wherein it is held that the medical representatives do not perform duties of skilled and technical nature and, therefore, they are not workmen. The Court has discussed at length the correct position of law emerging from the judicial decisions, statutory provisions and the changes made therein. After discussing the case law on the subject and the statutory provisions, the Hon'ble Supreme Court has come to the conclusion that "the word "skilled" would not include the kind of work done by the sales promotion employees. For the very same reason, the word "operational" would also not include the said work. To hold that everyone who is connected with any operation of manufacturing or sales is a workman would render the categorisation of the different types of work mentioned in the main part of the definition meaningless and redundant." It was further held that the word "skilled" in the context in which it is used will not include the work of Sales Promotion employee such as the medical representative. The work of promotion of sales of the product or services of the establishment is distinct from and independent of the types of work covered by the said definition. On the basis of this judgment as well as on the basis of the authorities relied on before the Labour Court, Mr. Vaishnav has submitted that no error is committed by the Labour Court in rejecting the Recovery Application and hence the petition should be dismissed with costs.

4. I have heard Mr. Vaishnav and I have also gone through the facts stated and averments made in the petition as well as in affidavit-in-reply. I have also gone through the order passed by the Labour Court and the authorities discussed therein. I am of the view that the Labour Court has reached the conclusion after appreciation of the evidence on record and has rightly arrived at the conclusion that no adequate evidence was led by the petitioner in support of his claim and the

petitioner has failed to prove his claim before the Labour Court. Since the petitioner, being a medical representative, cannot be considered as the "workman" within the meaning of Section 2(s) of the Industrial Disputes Act. Based on the judgment of the Hon'ble Supreme Court, the Labour Court has rightly held that the Recovery Application filed by the petitioner was not maintainable. Thus, on both the points, that is on merits as well as on legality, the order of the Labour Court does not call for any interference by this Court while exercising the writ jurisdiction under Article 226/227 of the Constitution of India. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]